AFR (23)

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मामला क्रमांक ·CRA NO. 84·· **सन्** 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

APPELLANT: Tanuram, son of Dhanaram Kalga, aged about 25 years, Occupation-Agriculture Labour R/o Chingari, Police Station Lelunga, District: Raigarh (C.G.)

Versus

RESPONDENT: State of Chhattisgarh, Through P.S. Lelunga, District: Raigarh (C.G.)

Present:

Shri R.K. Jain, Advocate for the appellant.
Shri D.K. Gwalre, Deputy Govt. Advocate for the State/respondent.

Division Bench: - Hon'ble Shri L.C. Bhadoo & Hon'ble Shri Dhirendra Mishra, JJ.

ORAL JUDGMENT
(Delivered on 16-3-2007)

L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 5th December, 2000 passed by the 2nd Additional Sessions Judge, Raigarh in S.T. No.146/98 whereby learned Additional Sessions Judge after holding the accused guilty for commission of offence under Section 302 of the I.P.C., for committing murder of Santuram, sentenced him to undergo imprisonment for life & to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 6 months.

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Case of the prosecution, in brief, is that Saniyaro Bai (PW-14) was married to accused Tanuram. At about 7-8 p.m. in the night of 3-5-98 when the accused reached on the spot, he saw something lascivious between Santuram and his wife Saniyaro Bai. At that time, he was carrying Lathi in his hand. He assaulted Saniyaro Bai with Lathi. When he attempted second assault, Saniyaro Bai held Lathi, however, the accused snatched the same, assaulted her 2-3 times. Thereafter, the accused attacked the deceased with same Lathi on his head. In the meantime, Saniyaro Bai ran away. Thereafter, the accused repeatedly attacked Santuram on his head. Saniyaro Bai disclosed the fact in the house of Bhagtu. The accused after attacking the deceased with Lathi chopped his penis and right side of scrotum with a blade. The accused thereafter went to the village where meeting of villagers was going on. In that meeting, he disclosed that when he saw something lascivious between his wife and Santuram, he committed murder of Santuram by attacking with a club. He has chopped his penis and scrotum. He shown the Lathi to them. Thereafter, PW-3 Pilakram informed family members of the deceased. Santram gave merg intimation Ex.-P/16, based on that F.I.R. Ex.-P/1 was registered. The Investigating Officer left for place of occurrence. He prepared site plan Ex.-P/9. He seized wrapper of Topaz blade, clothes of the deceased, blood stained soil and plain soil from the place of occurrence. He also seized the piece of scrotum and piece of penis under Ex.-P/10 which were lying at some distance. After giving notice Ex.-P/3 to the Panchas,

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he prepared inquest Ex.-P/8 on the body of the deceased. The body of the deceased was sent for post-mortem examination to the Government Hospital, Lelunga where Dr. R.S. Upadhayay conducted postmortem and prepared postmortem report Ex.-P/14. Seized articles were sent for chemical examination to the Forensic Science Laboratory under Ex.-P/21 from where report Ex.-P/24 was received. PW-2 Tilakram, sub inspector, seized Lathi under Ex.-P/5 on being produced by the accused. Clothes of the accused were seized under Ex.-P/6.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Gharghoda, who in turn committed the case to the Sessions Judge, Raigarh, from where learned 2nd Additional Sessions Judge received the case on transfer.

The prosecution in order to establish charge against the accused examined 20 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied material appearing against him. He has stated that on account of animosity witnesses have deposed against him. He has further stated that on the fateful day he went to his brother-in-law's place at Barkaspali along with his wife. He stayed in the night at his brother-in-law's place. Next day morning when he returned, he came to know about the death. He is innocent and has been falsely implicated in the crime. He examined DW-1 Dukhuram to the effect that he came to their village for dinner.

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Learned Additional Sessions Judge after hearing arguments of the respective counsel convicted and sentenced the accused as aforementioned.

We have heard Shri R.K. Jain, counsel for the appellant and Shri D.K. Gwalre, Deputy Govt. Advocate for the State/respondent.

The homicidal death of deceased Santuram is not in dispute. PW-16 Dr. R.S. Upadhayay has stated that on 5-5-98 he conducted postmortem on the body of Santuram. He noticed following injuries:-

(1) Incised wound having 4 cm circumference on the penis,

(2) Incised wound in the size of 10 cm x 8 cm over right side of scrotum,

(3) Lacerated wound in the size of 10 cm x 2 cm x scalp deep. Wound was situated over front portion of scalp,

(4) Lacerated wound in the size of 9 cm x 3 cm x scalp deep.

(5) Right and left temporal region was fractured. Frontal bone was also fractured. Penis was chopped. Right side of the scrotum was found chopped.

The above injuries were ante mortem in nature. The cause of death was coma and head injury. The death was homicidal in nature. Apart from that, the accused made extra judicial confession before PW-2 Tilakram and PW-3 Pilakram. In view of

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the above, it is established that death of the deceased was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, in this case, there is no direct or ocular evidence. The case rests on the circumstantial evidence i.e. extra judicial confession made by the accused before PW-2 Tilakram and PW-3 Pilakram.

Learned counsel for the accused/appellant argued that perusal of evidence of PW-3 Pilakram shows contradictions regarding time and date of the extra judicial confession made by the accused, as also the prosecution has not been able to establish that the accused made extra judicial confession before these persons.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

In order to appreciate argument advanced by learned counsel for the accused/appellant we have perused evidence of PW-2 Tilakram, who is village Kotwar. He has stated that one year before the day of his evidence at about 10 p.m. in the night there was meeting in the village in connection with Ramayan function and Tendu Patta leaves. In that meeting, Pilakram, Janakram, Naththuram, Sukhau Ram and other persons were present. By the time meeting was over, the accused came and said that he has committed murder of one person, on which they inquired from him, to whom he has murdered, he replied that he has murdered

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Santuram. They further inquired from the accused as to why he has murdered him, he replied that he saw something lascivious between his wife and Santuram near the heap of paddy straw of Naththulal that is why he has murdered him with Lathi. Thereafter they left for place of occurrence and saw that there were injuries on the head of Santuram. Penis and scrotum of Santuram were chopped. After leaving villagers for guarding body, he along with Santram and Tilakram went to the police station and informed. The wrapper of the blade, part of the penis and part of the scrotum were lying on the spot. In cross-examination of this witness, defence has not been able to elicit any circumstance which discredit evidence of this witnesses or shows that the accused had not made extra judicial confession before the Panchayat or extra judicial confession was not voluntary and true. Moreover, evidence of this witness shows that when the accused disclosed that he has committed murder of Santuram, all of them left for place of occurrence, they saw that body of Santuram was lying on the spot. Even part of scrotum and penis was cut. After confirming about the extra judicial confession made by the accused, they went and lodged the report. Therefore, extra judicial confession is corroborated by the ground situation seen by witnesses. PW-3 Pilakram has corroborated the above evidence and stated that the accused made extra judicial confession before him, Naththuram, Sukharuram, Tilakram. They went to the house of father of the deceased in order to inform him. Thereafter, father and grandfather of Santu went to the place of occurrence. They

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were at some distance. Sister of Tanuram's wife also disclosed him that Tanuram has beaten his wife, therefore, he has come running to her house. Tanuram while making extra judicial confession informed them that he saw something lascivious between his wife and Santu near the heap of paddy straw of Naththu. He also disclosed them that apart from committing murder of Santu, he has also assaulted his wife.

While drawing attention of the Court towards para-5 of the evidence of this witness, learned counsel for the appellant argued that this witness has stated that they returned at about 12.00 hours in the Monday night. Barat went on Sunday morning, therfore, they were not in the village in Sunday night.

But, we do not find any substance in this argument for the reason that in the latter part of the same para this witness has stated that he forgot to tell the day, therefore, he is not able to tell Tanuram cried on Monday night that Santuram has died. This is a minor contradiction. On account of passage of time, such contradictions are likely to happen about the exact day. Solely on this ground, evidence of this witness cannot be disbelieved. Moreover, evidence of this witness is corroborated by the evidence of PW-2 Tilakram and ground situation. In cross-examination of these witnesses, defence has not been able to elicit any circumstance which makes evidence of these witnesses unreliable or untrustworthy. Therefore, in view of the above discussion, it is established that the accused made extra judicial confession before Panchayat in the presence of PW-2 Tilakram and PW-3 Pilakram,

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that confession was voluntary and true, therefore, from the above evidence, involvement of the accused in crime in question is established.

Learned counsel for the accused/appellant argued that when the accused saw his wife and the deceased in a compromising position, the accused lost his self control, that incident provoked him, in a heat of passion he attacked, in the first instance, to his wife and thereafter the deceased, hence act of the accused comes under Exception I of Section 300 of the I.P.C., therefore, offence under Section 302 of the I.P.C. is not made out against the accused.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

In order to appreciate argument advanced by learned counsel for the appellant we have perused evidence of PW-2 Tilakram and PW-3 Pilakram. In their evidence they have categorically stated that when the accused made extra judicial confession before Panchayat, he categorically said that when he saw his wife and deceased in a compromising position near the heap of paddy straw of Naththu, he attacked his wife first and thereafter the deceased with club which he was carrying. Therefore, it is admitted position that when the accused saw his wife and the deceased in a compromising position, he attacked deceased. It is but natural, when the accused saw the deceased and his wife in a compromising position, he lost his self control, as

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a result of provocation, he attacked the deceased with club which he was carrying, as such, act of the accused comes under Exception I of Section 300 of the I.P.C.. For this, we are fortified in our view by the judgment of the Apex Court in the matter of **State of U.P. V. Lakhmi** reported in **1998 Cri.L.J. 1411**.

In the said case also, the accused committed murder of his wife. When the accused came to know that one Ramey had done foul acts with his wife, the accused saw something lascivious between his wife and PW-2 (Ramey) just when he entered the house from field, seeing that act, the accused became suddenly deranged, therefore, the accused was given benefit of Exception I of Section 300 of the I.P.C. and was held guilty for commission of offence under Section 304 Part I of the I.P.C.

In the present case also even the prosecution witnesses have stated that the accused while making extra judicial confession said that he saw his wife and the deceased in a compromising position, therefore, he attacked him with club which he was carrying. The witnesses went to the spot where dead body of the deceased was found, even part of penis and scrotum was also chopped by the accused which were lying near the body of the deceased. Therefore, the act of the accused comes under Exception I of Section 300 of the I.P.C.. He is liable to be convicted under Section 304 Part-I of the I.P.C..

In the result, the appeal of the appellant succeeds in part. The conviction and sentence imposed upon him under Section 302

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Barve	of the I.P.C. are set aside. Instead thereof, he is convicted under Section 304 Part-I of the I.P.C. and sentenced to undergo R.I. for 8 years 6 months.- It is stated that the accused is in detention since 24-5-98 thereby the accused has undergone sentence of 8 years 10 months. Therefore, we sentence the accused to the sentence already undergone by him. The accused be set at liberty forthwith, if he is not required in any other case. **Sd/-** **L.C.BHADOO** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**